

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: John Hernan
DOCKET NO.: 05-00801.001-F-1
PARCEL NO.: 05-19-100-014

The parties of record before the Property Tax Appeal Board are John Hernan, the appellant, by attorney Boyd L. Gates of Burstein & Gates in West Dundee and the Kane County Board of Review.

Since the date of hearing, the Property Tax Appeal Board was informed of the passing of Attorney Gates. By letter dated May 15, 2008, appellant John Hernan was given 30-days to advise of new counsel to whom correspondence should be addressed or, alternatively, correspondence from the Property Tax Appeal Board would be addressed directly to appellant Hernan. The appellant did not respond to the Property Tax Appeal Board by the established deadline.

The subject property consists of a farm and associated land and buildings located in Hampshire, Plato Township, Kane County. Appellant only contests the assessment of the ½-acre homesite based on unequal treatment in the assessment process and a legal contention.

In support of the inequity argument, appellant presented six single-spaced typed pages consisting of listings of parcel numbers, homesite acreage, and assessments of homesites for 2005. According to appellant, this exhibit was presented by the Plato Township Assessor at the board of review hearing in support of the current assessment of the homesite. But for a few exceptions, the listing displays that homesites associated with farmland in Plato Township which range in size from .35 acres up through 1.75 acres are assessed at \$29,571. Then, the vast majority of two-acre through 3.21 acre homesites in the township have been assessed at \$36,142 or \$49,285. And, lastly, the list

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the Kane County Board of Review is warranted. The correct assessed valuation of the property is:

FARMLAND:	\$	1,365
HOMESITE:	\$	29,571
RESIDENCE:	\$	67,852
OUTBUILDINGS:	\$	10,500
TOTAL:	\$	109,288

Subject only to the State multiplier as applicable.

PTAB/cck/7-15

reflects homesite assessments which range in size from 3.5 to 11 acres varying from \$0 to \$82,142.

With regard to this data, appellant's attorney argued, without any sales data to support the proposition, that purchasers do not in fact pay about the same sales price for a rural lot of .35-acre up to nearly 2 acres. Therefore, appellant concluded that the assessment data presented established inequity of assessments of farmland homesites in Plato Township.

In addition, appellant presented four residential, improved lots, in Plato Township of .2 or .4 acres in size with land assessments of \$19,998 and \$23,331, respectively, to establish lack of uniformity for farmland homesite assessments. Appellant Hernan further testified that he viewed each of these four single-family residential improved parcels prior to the date of hearing in this matter; appellant Hernan further testified that none of these parcels is attached to a farm.

Lastly, counsel for appellant noted at hearing that a reduction in assessment had been achieved in 2003 from an appeal and that appellant was agreeable to a like increase in assessment as compared to nearby properties of about 10%. On the basis of these comparisons, the appellant felt that a homesite assessment of \$19,620 was appropriate for the subject.

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of \$29,571 for the subject homesite was disclosed. The board of review asserted that the subject's ½-acre homesite was uniform with other farmland homesites in the township. Furthermore, the board of review specifically recinded an assertion made in a letter from the Plato Township Assessor, Janet M. Roush, which was filed as evidence with the Property Tax Appeal Board that the subject property is being rented by appellant for parking for high school students and should perhaps be classified as commercial property.

In support of the current assessment, the board of review asserted that based upon limited sales data of farmland homesite properties ranging in size from .35-acre up to 2 acres, all such homesites are uniformly assessed at \$29,571. The board of review relied upon the same six page listing of all homesites attached to farms in the township identifying the parcel, the homesite size, and the homesite assessment. In addition, the testimony of the Plato Township Assessor, Janet M. Roush, was presented wherein she indicated that her methodology for assessing farmland homesites was to utilize the "same sales of lots that occur within our township and just applying them to the homesites of the lands that we have under these [parcels]." Those sales indicated that there was not a great variation in value of the lands between .35-acre up to 2 acres of land. Above 2 acres of

land, the township assessor began to see a slight increase in value and changes in amenities such as creeks and woodland that would change the assessment from parcel to parcel. Likewise, farmland homesites ranging in size from about 3.5-acres to 11 acres would vary depending upon amenities and location. Based on its analysis of these properties, the board of review requested confirmation of the subject's homesite assessment.

On cross-examination, the township assessor expounded that the farmland homesite assessment of \$29,571 for a 2-acre parcel or less in the township was determined from sales data as follows: "We have other subdivisions within the township that are larger, that are not smaller towns, they are one-acre and above of which we have land [rural acreages] -- that are still under the well and septic that are farmland homesites would be using but they are acres and above we would be using." On further cross-examination, the township assessor agreed that there is not a uniform sale price per acre of rural subdivision land, but she developed the uniform assessment for farm homesites because she had no other criteria to use.

In a written rebuttal previously filed in this matter, counsel for appellant responded to the apparent erroneous assertion about the use of the subject property for paid parking and indicated that the students are allowed to park on the property for free.

In the course of closing argument, the board of review representative cited to the Official Rules of the Property Tax Appeal Board, namely Section 1910.70(f), and asserted that appellant's attorney improperly appeared before the Property Tax Appeal Board as both an advocate and a witness. As such, the board of review requested that all of Attorney Boyd's "testimony" should be disregarded.

In response, Attorney Gates noted that the appeal was filed both under assessment equity and as a contention of law. Attorney Gates further indicated that he had filed a brief in this proceeding, he did not testify at the hearing, but rather had his client testify and asserted that he only argued his legal points and cross-examined the board of review's representative and witness.

Finally, the board of review representative contested the Hearing Officer's authority to allow a reply by appellant's counsel after the presentation of the board of review's closing argument.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

As a preliminary matter, it must be noted that "[a]ll appeals [before the Property Tax Appeal Board] shall be considered *de novo*." (35 ILCS 200/16-180) "Under the principles of a *de novo* proceeding, the Property Tax Appeal Board shall not presume the action of the board of review or the assessment of any local assessing officer to be correct. However, any contesting party shall have the burden of going forward." Official Rules of the Property Tax Appeal Board, 86 Ill. Admin. Code, § 1910.63(a). In this regard, the contentions made by appellant's counsel about previous statements of witnesses at the Kane County Board of Review hearing about homesite values and/or sizes of homesites in the township are irrelevant to the instant appeal. Similarly, the argument of appellant's counsel regarding the split decision which was made by the Kane County Board of Review is also irrelevant to the instant proceeding.

As to the issue raised about the conduct of closing arguments, Section 1910.90(c)(5) of the Official Rules of the Property Tax Appeal Board provides in pertinent part:

Closing statements - the closing argument of the contesting party shall be heard first, followed by the closing arguments of the board of review and intervenors, if any; the contesting party shall be permitted a brief rebuttal at the end of the closing arguments of the other parties. (Emphasis added.)

As such, the Property Tax Appeal Board finds that allowing appellant's counsel the opportunity to reply to the closing argument of the board of review was appropriate, particularly in the situation where the board of review raised a new matter in the course of closing argument which had not been previously raised during the course of the proceeding. Furthermore, upon review of the hearing, the Board finds that Attorney Gates only acted as an advocate and reiterated assertions which were set forth in the brief already on file before the Property Tax Appeal Board and which had been served upon the board of review. The Property Tax Appeal Board finds there was no violation of the terms or rationale of Section 1910.70(f) of the Official Rules of the Property Tax Appeal Board. Furthermore, the Board finds that there was no "testimony" of Attorney Gates which could or should be stricken from this record and thus denies the request of the board of review to do so.

As to the merits of this matter, appellant contends unequal treatment in the subject's homesite assessment as the basis of the appeal. The Supreme Court of Illinois in Walsh v. Property Tax Appeal Board, 181 Ill. 2d 228 (1998), set forth the basic tenets of the Illinois Constitution's uniformity clause requirement as it relates to the assessment and taxation of real estate. The court stated that:

The Illinois property tax scheme is grounded in article IX, section 4, of the Illinois Constitution of 1970, which provides in pertinent part that real estate taxes "shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." Ill.Const.1970, art. IX, §4(a). Uniformity requires equality in the burden of taxation. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 20 (1989). This, in turn, requires equality of taxation in proportion to the value of property being taxed. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Thus, taxing officials may not value the same kinds of properties within the same taxing boundary at different proportions of their true value. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 20 (1989). The party objecting to an assessment on lack of uniformity grounds bears the burden of proving the disparity by clear and convincing evidence . . . Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 22 (1989).

Walsh v. Property Tax Appeal Board, 181 Ill. 2d at 234 (1998). The uniform assessment requirement mandates that property not be assessed at substantially greater proportion of its value when compared to similar properties located within the taxing district. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 21 (1989). Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). After an analysis of the homesite assessment data, the Board finds the appellant has not met this burden.

Simply put, the uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960); People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 520 (4th Dist. 1983). A uniformity violation can be established through evidence regarding the assessed valuations of a small number of properties. Du Page County Board of Review v. Property Tax Appeal Board, 284 Ill. App. 3d 649, 655 (1996). The properties selected for comparison must be similar in kind and character and must be similarly situated to the subject property. Id. at 654.

Appellant presented two types of properties for consideration. The first type was the six page list of homesites in the township

which establishes that the assessor has, for all practical purposes, assessed all homesites ranging from .35-acre to nearly 2 acres in size at \$29,571, regardless of size. On its face, this is uniform. Appellant essentially was arguing this was not a "correct" assessment of 33 1/3% of fair market value because these parcels of varying sizes would not all sell for \$88,713 each. However, appellant supplied no sales data whatsoever to support this contention that sales prices vary among homesites of from .35-acre up to 2-acres in size.

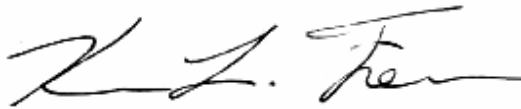
The second type of evidence appellant presented was four residential improved lots of .20 and .40 acres, respectively, in the township which were not attached to farms and have been assessed at \$19,998 and \$23,331, respectively. Appellant argued this was presented to refute an assertion by the township assessor that no "homesites" in the township were valued at less than \$88,713. As described in the testimony, a "homesite" is the tract upon which a farm dwelling and appurtenant structures are located. Pursuant to the Property Tax Code, "[e]ach farm dwelling and appurtenant structures and the tract upon which they are immediately situated shall be assessed by the local assessing officials at 33 1/3% of fair cash value" (35 ILCS 200/10-145) The evidence clearly indicates that these four suggested properties were not "homesites" associated with farmland, but rather these were merely improved residential real estate lots. As such, these suggested comparables are not similar to the subject property and have been given no weight in the Board's analysis.

In summary, both parties presented assessment data on numerous farmland homesites located in Plato Township ranging in size from .35-acre to nearly 2-acres, all of which were assessed for \$29,571. The subject homesite property of 1/2-acre has been likewise assessed for \$29,571. Therefore, the Board finds the subject homesite's assessment is supported by the properties contained in the record. As a result of this analysis, the Property Tax Appeal Board finds the appellant failed to adequately demonstrate that the subject homesite property was inequitably assessed by clear and convincing evidence and no reduction is warranted.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



Chairman



Member



Member



Member



Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: August 14, 2008



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.